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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

WILLIAM "LEVI" FAIRCHILD, SARAH
FAIRCHILD and OLIVIA FAIRCHILD,

Case No. 3:20-cv-01425-HZ

Plaintiffs,

v.

BRANDON A. WHITWORTH; JUSTIN
KNOWLES; KNOWLES ENTERPRISES, LLC,
a dissolved Washington limited liability
company; KNOWLES ENTERPRISES, LLC, a
Washington limited liability company,
DISCOUNT TIRE CO. OF WASHINGTON,
INC., a Washington corporation; DISCOUNT
TIRE CO., INC., an Arizona corporation,

Defendants.

**DISCOUNT TIRE CO. OF
WASHINGTON, INC. AND
DISCOUNT TIRE CO., INC.'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS'
AMENDED COMPLAINT**

In response to Plaintiffs' Amended Complaint, Defendants Discount Tire Co. of

Page 1 DISCOUNT TIRE CO. OF WASHINGTON, INC. AND DISCOUNT TIRE CO.,
INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' AMENDED
COMPLAINT

Washington, Inc. and Discount Tire Co., Inc. (hereinafter collectively “Defendants”) hereby admit, deny and allege as follows:

1.

Defendants admit the allegations of paragraphs 1, 2, 4 and 5 of Plaintiffs’ Amended Complaint.

2.

In answer to paragraph 3 of Plaintiffs’ Amended Complaint, Defendants admit only that Defendant Justin Knowles was and is a resident of Washington. Except as expressly admitted herein, the remaining allegations of paragraph 3 are denied.

3.

Defendants admit the allegations in paragraphs 6 and 7 of Plaintiffs’ Amended Complaint.

4.

In answer to paragraphs 8, 9 and 10 of Plaintiffs’ Amended Complaint, Defendants admit only that on or about July 8, 2018, Plaintiff William Fairchild was accompanied by his wife, Sarah Fairchild, and his daughter, Olivia, while operating his vehicle in the southbound lanes of travel on I-5 at or near the intersection with Delaney Road in Salem, Marion County, Oregon, when his vehicle was struck by a wheel and tire that had dislodged from another vehicle travelling in the northbound lanes of travel on I-5. Except as expressly admitted herein, each and every remaining allegation of paragraphs 8, 9, and 10 is denied.

5.

The allegations of paragraph 11 of Plaintiffs’ Amended Complaint are not directed at these Defendants and, therefore, no response is necessary. However, in an abundance of caution and to the extend a response is necessary, the allegations of paragraph 11 are denied.

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6.

Defendants deny the allegations of paragraph 12 of Plaintiffs' Amended Complaint.

7.

In answer to paragraphs 13, 14 and 15 of Plaintiffs' Amended Complaint, Defendants admit only that as a result of the July 8, 2018 incident, Plaintiff William Fairchild sustained some physical injury requiring medical treatment, the nature and extent of which as alleged by Plaintiffs is denied. Except as expressly admitted herein, each and every remaining allegation of paragraphs 13, 14 and 15 is denied.

8.

Defendants deny the allegations of paragraphs 16 through 20 of Plaintiffs' Amended Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Comparative Fault)

9.

Defendants Brandon Whitworth, Justin Knowles, Knowles Enterprise, LLC (dissolved) and Knowles Enterprises, LLC (current) were negligent or comparatively at fault in one or more of the following particulars:

- a. In failing to keep a proper lookout;
- b. In failing to keep the motor vehicle and/or trailer they were operating under proper control;
- c. In operating the vehicle and trailer at a speed greater than was reasonable under the circumstances, including the knowledge of the problems with the trailer wheels and tires following multiple failed repair attempts;

- d. In providing a vehicle and/or trailer to another with knowledge that one or more mechanical problems with the vehicle and/or trailer existed;
- e. In failing to properly mount, balance and torque the lug nuts of the trailer; and
- f. In operating an unsafe vehicle and/or trailer on the roadway with knowledge of problems with the vehicle and/trailer.

10.

Plaintiff William Fairchild was comparatively at fault or negligent in one or more of the following particulars:

- a. In operating his vehicle at an unreasonable rate of speed under the circumstances then and there existing;
- b. In failing to maintain a proper lookout; and
- c. In failing to swerve, brake or take other appropriate evasive action after seeing the debris entering his lane of travel.

11.

Defendants' liability, if any, shall be compared with the fault of each and every other party who is found liable or at fault in accordance with ORS 30.610 et. seq.

SECOND AFFIRMATIVE DEFENSE

(Mitigation of Damages)

12.

Plaintiffs have failed to mitigate their damages.

THIRD AFFIRMATIVE DEFENSE

(Lack of Personal Jurisdiction)

13.

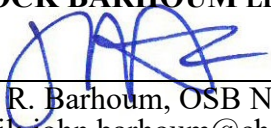
This Court does not exercise personal jurisdiction over Defendants for the claims and

allegations raised in Plaintiffs' Amended Complaint

Wherefore, Defendants pray for judgment in their favor, for their costs and disbursements incurred herein and for any other such relief as their court deems equitable, just and proper.

DATED this 9th day of September, 2020.

CHOCK BARHOUM LLP



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FAIRCHILD and OLIVIA FAIRCHILD,

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Plaintiffs,

CERTIFICATE OF SERVICE

v.

BRANDON A. WHITWORTH; JUSTIN
KNOWLES; KNOWLES ENTERPRISES, LLC,
a dissolved Washington limited liability
company; KNOWLES ENTERPRISES, LLC, a
Washington limited liability company,
DISCOUNT TIRE CO. OF WASHINGTON,
INC., a Washington corporation; DISCOUNT
TIRE CO., INC., an Arizona corporation,

Defendants.

I hereby certify that on the 9th day of September, 2020, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to all registered individuals. Additionally, I hereby certify that a true copy of the foregoing **DISCOUNT TIRE CO. OF WASHINGTON, INC. AND DISCOUNT TIRE CO., INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' AMENDED COMPLAINT** was served as stated below on:

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Attorneys for Plaintiffs

- ☐ By hand delivery
- ☐ By first-class mail*
- ☒ By electronic service through ECF system as identified on the Notice of Electronic Filing (NEF)
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*With first-class postage prepaid and deposited in Portland, Oregon.

DATED this 9th day of September, 2020.

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